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this equitable solution.[54*] It must clearly appear that the matter, in regard to which error has been committed, is entirely distinct and separate from the matters involved in the other issues, and that the new trial can be had without danger of complications as to these other matters.[55*] Therefore in the case under consideration, the negligence of the defendant being settled, the issue as to the measure of damages is not so closely allied to those of negligence and contributory negligence as to require a new trial of the entire case. Had the new trial been limited to damages much expense and time of the court, the parties, counsel and witnesses would have been avoided.

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Legitimation—Bastardy—Effect on Right of Inheritance of Legitimated Child by Subsequent Marriage of Bastard's Parents

In an action brought by the assignee of a granddaughter of an intestate against his administrators to recover a sum alleged to be due the granddaughter, as the balance of her share in her grandfather's estate, a recent Georgia case[1] held that the granddaughter, born out of wedlock, was made legitimate for all purposes by the subsequent marriage of her father and mother and the recognition of the child by the father as his own, and was entitled to inherit from her grandfather through her father.

Plaintiff contended that the right of inheritance by the granddaughter rested on two Georgia statutes: (1) " * * * The marriage of the mother and reputed father of an illegitimate child, and the recognition of such child as his, shall render the child legitimate; and in

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502, 71 So. 804 (1916); Borough Const. Co. v. City of New York, 200 N. Y. 149, 93 N. E. 480 (1910); Pinnix v. L. A. Smithdeal, 182 N. C. 410, 109 S. E. 265 (1921); Jones v. Insurance Co. of Va., 153 N. C. 388, 69 S. E. 266 (1910); Rushing v. Railroad, 149 N. C. 158, 62 S. E. 890 (1908); Tillett v. Ry. Co., 115 N. C. 616, 23 S. E. 264 (1895); *see*, Fry v. N. C. Ry. Co., 159 N. C. 357, 366, 74 S. E. 971, 975 (1912) (dissenting opinion).

[54*] Torr v. United Rys. of San Francisco, 187 Cal. 505, 202 Pac. 671 (1922) (Where the verdict for personal injuries is inadequate, the appellate court cannot merely reverse that portion of the judgment fixing the amount and affirm that portion fixing the liability of the defendant; but the entire case must be retried.).

[55*] Rushing v. Railroad, 149 N. C. 158, 62 S. E. 890 (1908); *accord*, Dean v. Bridges, 260 App. Div. 48, 20 N. Y. S. (2d) 747 (1st Dept., 1940) (Where trial court rendered verdict for plaintiff for malicious prosecution and false imprisonment, there being no separation of damages with respect to the causes of action, it was *held*, that if the recovery could not be sustained as to one of these there must be a reversal as to the entire judgment.); Morrell v. Lallonde, 45 R. I. 112, 120 Atl. 435 (1923) (The question of damages is so closely connected with and so dependant upon the findings of facts in issue, that it is impossible to try the case fairly without presenting it entirely to the jury.); Olsen v. Brown, 186 Wis. 179, 202 N. W. 167 (1925) (The perverseness of the jury manifested as to the question of damages might well have extended to affect the question of the contributory negligence; thus a new trial should be awarded as to all the issues involved.).

[1] Morris v. Dilbeck et al., — Ga. —, 31 S. E. (2d) 93 (1944).

such case the child shall immediately take the surname of the father."[2] (2) "An illegitimate child, or bastard, is a child born out of wedlock, and whose parents do not subsequently intermarry. * * *"[3] The court in upholding plaintiff's position stated that ". . . it seems clear that it was the intention of the law to make the child legitimate *for all purposes (Italics supplied.)* from the date of its birth."[4]

At common law a bastard was said to be *filius nullius,* the son of no one.[5] He could inherit from no one,[6] and none could inherit from him except his direct descendants. The intermarriage of the parents of an illegitimate child at common law did not legitimate such child; but by both the civil and canon law the subsequent marriage of the parents legitimized their offspring born before marriage.[7] Today, in all of the fifty-one American jurisdictions the legislatures have provided means for mitigating the harsh rules of the common law,[8] and in all these jurisdictions are found provisions under which the child may become legitimate by the act of one or both parents.[9]

North Carolina has provided by statute for the legitimation of bastards by the subsequent marriage[10] of the mother and the reputed father.[11]* Some jurisdictions, including Georgia,[12] require in addition to the marriage that the father acknowledge the child in order to complete the legitimation. In California[13] in order to give the child certain rights of inheritance it is necessary for his parents to have intermarried before his death, and his father acknowledge him as his child, or "adopt" him into his family.

Ordinarily, the statutes under consideration are declared by the courts to be remedial and are given a liberal construction.[14] While

[2] GA. CODE ANN. (Park, et al., 1937) tit. 74, §101.
[3] GA. CODE ANN. (Park, et al., 1937) tit. 74, §201.
[4] Morris v. Dilbeck et al., — Ga. —, 31 S. E. (2d) 93 (1944).
[5] Thayer v. Thayer, 189 N. C. 502, 507, 127 S. E. 553, 556, 39 A. L. R. 428, 433 (1925).
[6] Wolf v. Gall, 32 Cal. App. 286, 163 Pac. 346, 350 (1917); Houghton et al. v. Dickinson, 196 Mass. 389, 82 N. E. 481 (1907).
[7] Thayer v. Thayer, 189 N. C. 502, 505, 127 S. E. 553, 555, 39 A. L. R. 428, 432 (1925).
[8] 4 VERNIER, AMERICAN FAMILY LAWS (1936) §242.
[9] *Ibid.*
[10] As to what constitutes a "marriage" within the meaning of a statute legitimating issue of all marriages null in law, *see* NOTE (1933) 84 A. L. R. 499.
[11]* N. C. GEN. STAT. ANN. (Michie, Sublett & Stedman, 1943) §49-12: "When the mother of any illegitimate child and the reputed father of such child shall intermarry or shall have intermarried at any time after the birth of such child, the child shall in all respects after such intermarriage be deemed and held to be legitimate and entitled to all the rights in and to the estate, real and personal, of its father and mother that it would have had had it been born in lawful wedlock."
[12] GA. CODE ANN. (Park, et al., 1937) tit. 74, §101.
[13] CAL. PROB. CODE (Deering, 1941) §255.
[14] Haddon v. Crawford, 49 Ind. App. 551, 97 N. E. 811 (1912); *In re* Hoagland's Estate, 125 Misc. Rep. 376, 211 N. Y. Supp. 629 (1925); James v. James, 253 S. W. 1112 (Tex. Civ. App. 1923); Goodman v. Goodman, 150 Va. 42, 142 S. E. 412 (1928); Ash v. Way's Adm'rs et al., 2 Gratt. 203 (Va. 1845).

comparatively little direct authority is available as to the right to inherit from the kindred of the legitimated person's parents, the prevailing view seems to be that the statutes should be interpreted so as to permit inheritance of that sort. As early as 1845, it was held that where a bastard marries, and dies, leaving a legitimate child; and then the parents of the bastard marry, and the bastard is recognized by the father as his child both before and after his marriage to her mother, the illegitimate's child may inherit through his mother from her father.[15] Since then it has been established in California,[16*] Kentucky,[17*] Louisiana,[18*] and other jurisdictions[19] that upon the parents' subsequent marriage, a child born before wedlock becomes legitimate for all purposes[20] from the date of its birth.[21]

The Supreme Court of North Carolina in passing on a similar problem *In re Estate of Wallace*[22] where the intestate left surviving him the son of a deceased sister—this nephew being born while his mother was unmarried; held that the subsequent marriage of the bastard's mother and his reputed father, though legitimizing the child, simply gave him the right to inherit from his father and mother, and went no further, thus rejecting his claim to a share as one of the next of kin of his maternal uncle who had survived the claimant's mother. It was said that the provisions of C. S., 279,[23] ". . . being in derogation of the common law . . . should be strictly construed."[24] The statute

[15] Ash v. Way's Adm'rs et al., 2 Gratt. 203 (Va. 1845).

[16*] Wolf v. Gall, 32 Cal. App. 286, 163 Pac. 346 (1917) (Right to inherit from grandmother by grandchildren representing deceased father who had been legitimated was upheld.).

[17*] Jackson v. Moore, 8 Dana 170 (Ky. 1849) (An antenuptial child who was legitimated by the parents' marriage and father's recognition, entitled child to inherit from an uncle, the father's brother.).

[18*] Cormier et al. v. Cormier et al., 185 La. 968, 171 So. 93 (1936) (By implication the court held that a grandchild, son of a legitimated father, could represent his father and inherit from father's parents.); Armant's Succession, 1 La. App. 258 (1924).

[19] Brewer v. Hamor, 83 Me. 251, 22 Atl. 161 (1891); Geisler v. Geisler, 160 Minn. 463, 200 N. W. 742 (1924); *In re* McDade's Estate, 95 Okla. 120, 218 Pac. 532 (1923) (Writ of error dismissed for want of jurisdiction in 269 U. S. 529, 46 Sup. Ct. 16, 70 L. ed. 396 (1925)); James v. James, 253 S. W. 1112 (Tex. Civ. App. 1923).

[20] Cases cited *supra* notes 15-19; also, Houghton et al. v. Dickinson, 196 Mass. 389, 82 N. E. 481 (1907); *In re* Wray's Estate, 93 Mont. 525, 19 P. (2d) 1051 (1933); Green et al. v. Wilson et al., 112 Okla. 228, 240 Pac. 1051 (1925); Goodman v. Goodman, 150 Va. 42, 142 S. E. 412 (1928).

[21] *See* Blythe v. Ayres, 96 Cal. 532, 31 Pac. 915, 19 L. R. A. 40 (1892); *In re* Jessup, 81 Cal. 408, 21 Pac. 976, 6 L. R. A. 594 (1899), *aff'd on rehearing*, 22 Pac. 742 (1889), *motion to vacate rehearing* denied, 22 Pac. 1028 (1889); Brisbin v. Huntington, 128 Iowa 166, 103 N. W. 144, 5 Ann. Cas. 931 (1905); Allison v. Bryan, 21 Okla. 557, 97 Pac. 282, 18 L. R. A. (N. S.) 931, 17 Ann. Cas. 468 (1908); Eddie v. Eddie, 8 N. D. 376, 79 N. W. 856, 73 Am. St. Rep. 765 (1899).

[22] 197 N. C. 334, 148 S. E. 456, 64 A. L. R. 1121 (1929).

[23] Now N. C. GEN. STAT. ANN. (Michie, Sublett & Stedman, 1943) §49-12, *supra*, note 11.

[24] *In re* Estate of Wallace, 197 N. C. 334, 337, 148 S. E. 456, 457, 64 A. L. R. 1121, 1124 (1929).

relied on by the claimant was enacted in 1917,[25] subsequent to the marriage of the mother and reputed father of the claimant, but in *Stewart* v. *Stewart*[26] this statute, by its express language, was declared retroactive as well as prospective in effect. It would seem that the North Carolina Court in making its decision in this case could have safely relied upon the construction given similar statutes in other jurisdictions without doing violence to the provisions of the statute. In all probability the decision must have been influenced by the provisions of the two preceding statutes, the first[27*] providing for legitimation by petition of the putative father, and the second[28*] stating the effects of such legitimation. The Court in *Love* v. *Love*[29] interpreted this latter statute[30] to mean that "The word 'only' as used in this section qualifies the words 'inherit from the father,' and not the words 'real estate,' thereby limiting the right of inheritance to the properties of the adopting father, and this is emphasized by the fact that the remaining part of the sentence provides that the adopted child is also entitled to the personal estate of his father."[31] The position of the Court in *Love* v. *Love*[32] and its reasoning can well be sustained, but there seems to be no necessity for applying the construction of a statute,[33] which limits the effects of legitimation when that legitimation is effected by a petition presented to the court by the putative father, to the following statute[34] prescribing legitimation by the marriage of the *parents* of the bastard. The Supreme Court of North Carolina by its decision *In re Estate of Wallace*[35] seems to have violated the intent of the legislature since the act[36] was entitled "An Act to Legitimate Bastard Children upon the Marriage of their Reputed Father and

[25] N. C. PUB. L. 1917, c. 219, §1.
[26] 195 N. C. 476, 142 S. E. 577 (1928).
[27*] N. C. GEN. STAT. ANN. (Michie, Sublett & Stedman, 1943) §49-10: "Legitimation.—The putative father of any illegitimate child may apply by petition in writing to the superior court of the county in which he resides, praying that such child may be declared legitimate; and if it appears that the petitioner is reputed the father of the child, the court may thereupon declare and pronounce the child legitimated; and the clerk shall record the decree."
[28*] N. C. GEN. STAT. ANN. (Michie, Sublett & Stedman, 1943) §49-11: "Effects of legitimation.—The effect of such legitimation shall extend no further than to impose upon the father all the obligations which fathers owe to their lawful children, and to enable the child to inherit from the father only his real estate, and also to entitle such child to the personal estate of his father, in the same manner as if he had been born in lawful wedlock. In case of death or intestacy, the real and personal estate of such child shall be transmitted and distributed according to the statute of descents and distribution among those who would be his heirs and next of kin in case he had been born in lawful wedlock."
[29] 179 N. C. 115, 101 S. E. 562 (1919).
[30] *Supra* note 28.
[31] Love v. Love, 179 N. C. 115, 117, 101 S. E. 562 (1919).
[32] 179 N. C. 115, 101 S. E. 562 (1919).
[33] *Supra* note 28.
[34] *Supra* note 11.
[35] 197 N. C. 334, 148 S. E. 456, 64 A. L. R. 1121 (1929).
[36] N. C. PUB. L. 1917, c. 219.

Mother," and was passed to abrogate the view that a child is either born a legitimate one or a bastard; at common law the theory being that "God alone can make the heir, not man."[37] It would seem that in view of the remedial purpose of the enactment, a liberal construction was intended, but not received.

There is no doubt but that the principal case in its liberal construction of the legitimation statute stands approved by an overwhelming majority. The view taken by North Carolina on this question stands alone and should be corrected by appropriate legislation.

R. I. LIPTON.

Duress—Effect of Threats of Arrest and Imprisonment on Validity of Contracts

A recent Georgia case[1] raises one of the problems of duress which confront the courts. In that case the plaintiff was continually pressed for three hours to execute a deed to property for a price which she thought to be inadequate. Finally one of the defendants informed the plaintiff that she would have to sign the papers or go to jail. This statement greatly frightened the plaintiff, whereupon she signed the instrument, still insisting that it was against her will. In the plaintiff's petition to set aside the deed the court refused to do so, saying that mere empty threats to arrest, where neither warrant has been issued nor proceedings commenced, do not amount to duress.

Under the common law duress was divided into two classes: duress by imprisonment and duress *per minas*. Duress by imprisonment existed where an individual was deprived of his liberty, and duress *per minas* was present where there was a threat to life, limb, or liberty.[2*]

It is usually held that what constitutes duress is a matter of law, but whether duress exists in a particular transaction is a matter of fact.[3] Under the old common law duress must have been such as would deprive a constant and courageous man of his free will, but the modern tendency is to include all such threats as would overcome the will of a person of only ordinary firmness.[4] Recently some of the courts are rejecting any objective standard and are simply inquiring whether the

[37] *See* Deák and Robbins, *The Familial Property Rights of Illegitimate Children: A Comparative Study* (1930) 30 COL. L. REV. 308 at 318.

[1] Hoover v. Mobley et al. — Ga. —, 31 S. E. (2d) 9 (1944).

[2*] 1 BL. COMM.* 131 (". . . there are two sorts (of duress): duress of imprisonment, where a man actually loses his liberty . . . , and duress *per minas*, where the hardship is only threatened and impending."); 2 COKE INSTITUTES* 483; *see* Hatter's Ex'r v. Greenlee, 1 Port. 222, 227, 26 Am. Dec. 370, 373 (Ala. 1834).

[3] Galusha v. Sherman, 105 Wis. 263, 81 N. W. 495, 47 L. R. A. 417 (1900).

[4] Brown v. Pierce, 7 Wall. 214, 19 L. ed. 134 (U. S. 1869); Bane v. Detrick, 52 Ill. 19 (1869); Morse v. Woodworth, 155 Mass. 233, 27 N. E. 1010 (1892).